IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1090 of 1993

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMANBHAI RUPABHAI BARIA

Versus

STATE OF GUJARAT

Appearance:
MS BANNA S DUTTA for Petitioner
MR MA BUKHARI APP for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT
and
MR.JUSTICE A.L.DAVE

Date of decision: 26/12/2000

ORAL JUDGEMENT (Per : MISS JUSTICE R.M.DOSHIT)

This appeal arises of the judgment and order

dated 15th September, 1993 passed by the learned Sessions Judge, Panch Mahals in Sessions Case No. 37 of 1993. The appellant before this Court is the accused. The appellant has been convicted for offence punishable under section 302 IPC and has been sentenced with life imprisonment and the fine of Rs. 500/=. In the event of default in payment of fine, sentence of simple imprisonment for six months has been passed.

It was alleged that on 13th November, 1992 at around 8 O'clock in the evening, the appellant-accused committed murder of his brother Kalubhai Rupabhai at village-Vadodar by hitting him on the neck with an axe. The FIR in respect of the above incident was lodged by one Champaben, wife of the deceased Kalubhai Rupabhai on 14th November, 1992. It was stated that the deceased Kalubhai Rupabhai had only one brother Ramanbhai ie., the accused. The agricultural lands were partitioned between the two brothers and they were residing separate in the same house. On the day of incident, earlier at 4 O'clock in the afternoon, the accused Ramanbhai had started to take water from the well to irrigate the wheat that he had sown on his land. The deceased Kalubhai Rupabhai needed to irrigate maize which was cultivated by him on his land, and therefore, he diverted the water to his field which had resulted into a quarrel between the two brothers. At around 8 O'clock, after the supper, when the deceased Kalubhai Rupabhai was sitting near the stove in the Osri of his house, the accused Ramanbhai was also at home and came with an axe and gave two blows on the neck of the deceased, the deceased started bleeding profusely and fell down. He died instantaneously. The accused appellant Ramanbhai was tried for the offence punishable under section 302 IPC by the learned Sessions Judge, Panch Mahals was convicted and sentenced as recorded hereinabove.

The prosecution has examined Dr. Lalit Kumar Desai [PW-1], the Medical Officer, Primary Health Centre, Morva. The said witness had performed the post mortem examination of the deceased Kalubhai Rupabhai. He proved the post mortem note Exh. 7. He had certified that the deceased had suffered an incised wound on the right side of the neck and the deceased died of `shock due to incised wound on the right side of neck'. He opined that the injury in question was caused by a sharp cutting edge instrument and had occurred within 12 to 18 hours. He opined that the said injury could have been caused by the muddamal axe. He also opined that the said injury was caused by a single blow. The prosecution has also examined eye witnesses Champaben Kalubhai [PW-2],

Kantibhai Virabhai [PW-3] and Mangalabhai Nanabhai [PW-4]. Champaben Kalubhai [PW-2] is the widow of the deceased Kalubhai Rupabhai. She has proved the FIR Exh. 9. She has been consistent in her deposition and has supported the case of the prosecution. Kantibhai Virabhai [PW-3] is the neighbour. He was present at the time of incident and was sitting with the deceased Kalubhai Rupabhai. He also has supported the prosecution case and has stated that while they were sitting near the stove, the accused Ramanbhai Rupabhai came with an axe and gave two blows of axe on the neck of the deceased Kalubhai Rupabhai. Mangalabhai Nanabhai [PW-4] was summoned by the accused Ramanbhai to mediate in the dispute between the two brothers and had gone to the house of the deceased. He also has stated that while they were sitting near the stove, accused Ramanbhai came with an axe and gave two blows on the neck of the deceased Kalubhai Rupabhai. The inquest panchnama Exh. 12 proves that the deceased Kalubhai Rupabhai was hit on his osri near the stove and that he had received incised wound on the right side of the neck. The panchnama of the scene of offence Exh.13 also proves that the deceased Kalubhai Rupabhai died on his osri near stove, as stated by the eye witnesses. The offending weapon, muddamal axe, was produced by Soniben, the wife of the accused Ramanbhai from the fence near their house. Blood stains were found on the blade of the muddamal axe. The FSL report Exh. 21 proves the presence of blood on the muddamal articles ie., mud plaster collected from the scene of offence, the muddamal axe and the clothes of the deceased. The blood found on the muddamal articles was human blood of Group `A'. Considering the medical evidence on record and the FSL report, it is proved that the deceased Kalubhai Rupabhai had received incised injury on the neck. He thus died homicidal death. The evidence of the eye witnesses is consistent and there is no reason why they should not be believed. It is, therefore, proved that the fatal injury on Kalubhai Rupabhai was caused by the accused Ramanbhai Rupabhai Baria with the muddamal axe. Hence, in our view, the prosecution has proved that the accused appellant Ramanbhai Rupabhai had committed murder of his brother Kalubhai Rupabhai at village Vadodar beyond reasonable doubt. The motive for the said offence has also been proved inasmuch as there was a dispute between the two brothers regarding use of water for irrigation of their fields. We agree with the learned trial Judge that the accused appellant Ramanbhai Rupabhai has committed offence punishable under section 302 IPC. The conviction and sentence passed upon the appellant-accused Ramanbhai Rupabhai Baria is confirmed.

The appeal is dismissed.

[Ms. R.M Doshit,J.]

[A.L Dave, J.]

Prakash*